IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revision Petition No.688 of 1992
Date of Decision: 24.1.2007

Narender Kumar.

..... Petitioner

Versus

The State of Haryana.

..... Respondent

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri H.S.Gill, Senior Advocate with Shri R.K.Dhiman, Advocate for the petitioner.
Shri S.K.Hooda, Senior Deputy Advocate General, Haryana.

....

Mahesh Grover,J.

The petitioner has filed the present revision petition against the judgment dated 12.4.1991 and order of sentence dated 15.4.1991 passed by the Judicial Magistrate Ist Class,Ambala (hereinafter described as `the trial Court') and judgment dated 21.9.1992 rendered by the Additional Sessions Judge, Ambala (hereinafter referred to as `the lower Appellate Court'). By the impugned judgment and order of sentence, the trial Court has convicted the petitioner under Section 409 of the Indian Penal Code (for short, `the I.P.C.') and sentenced him to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months, whereas the lower appellate Court, vide its judgment under challenge, converted the conviction of the appellant from Section 409 to Section 408 of the I.P.C., but maintained the sentence as awarded by the trial Court.

Briefly stated the facts of the case leading to the prosecution of the petitioner are that he was employed as Salesman with the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited (hereinafter described as `the Confed') and was posted at Kalka shop in the year 1984. He absented himself from duty for about a week. The shop which was entrusted to him for operation was not open to the public. On 2.5.1984, a raid was conducted by the officers of the Confed and the police. An inventory was prepared at the spot. After assessing the value of the articles which were found in the shop, the petitioner was found to have committed an embezzlement of Rs.56649.57. The inventory of the articles found in the shop was compared with the stock as it was available with petitioner on 31.3.1984. The said inventory was prepared by Shri S.C.Jain, Assistant Accounts Officer of the Confed.

After completion of the investigation, the petitioner was challaned & then charged for having committed an offence under Section 409 of the I.P.C.

The prosecution led its evidence to bring home the guilt of the petitioner. In his statement recorded under Section 313 of the Code of Criminal Procedure,1973 (for short, `the Cr.P.C.'), the petitioner took up a plea that the physical verification of the articles was done in his absence by detaining him in the police station and despite the fact that there was no shortage of stock, he was falsely implicated at the instance of the officers of the Confed, who were inimical towards him. In his defence, the petitioner also produced arbitration case file which is on record as Exhibit D2.

The trial Court held the petitioner guilty and sentenced him in the manner as noticed hereinabove, whereas the lower appellate Court

modified the conviction as aforestated.

Learned counsel for the petitioner contended that the case of the petitioner had been seriously prejudiced as no independent witness was enjoined at the time of conducting raid which is in complete violation of the provisions of Section 100(4) of the Cr.P.C. That apart, no witness was examined to prove the inventory of the goods prepared at the time of raid.

On the other hand, learned counsel for the State contended that it is a serious case of embezzlement and the petitioner has been rightly convicted and sentenced. The independent witnesses were not required to be enjoined and the petitioner himself appended his signatures in token of the correctness of the findings qua the store under his control.

I have heard the learned counsel for the parties and have perused the record.

The lower appellate Court, while discarding the plea of non-associating the independent witnesses, had recorded a finding that there was no plea of animosity raised by the petitioner. This was in complete contradiction to the plea of defence as raised by the petitioner while making statement under Section 313 of the Cr.P.C. wherein clear stand of false implication for the offences against him was taken by him on account of animosity. In view of this, it was imperative for the lower appellate Court to examine the issue in this perspective.

The plea of false implication as a result of motivation or animosity on behalf of the State officials and the non-association of the independent witnesses and its effect has to be examined with reference to each other.

The petitioner was admittedly not present at the time of

conducting of the raid. This should have even all the more necessary for the raiding party to associate independent witnesses, who would stand testimony to the raid and consequent seizure reflecting the discrepancies in the stock. Section 100(4) of the Cr.P.C., also casts a duty upon the officers or any other person about to make such search to call upon two or more independent witnesses. Nothing has been shown which could establish that the aforesaid provision was complied with or an attempt was made to join independent witnesses.

Non-association of independent witnesses, especially when the raid was conducted in the absence of the petitioner and the subsequent plea of false implication due to animosity eventually have resulted in a serious prejudice to the petitioner and cast a shadow of doubt on the credibility of the prosecution case.

Besides, it has been rightly contended by the learned counsel for the petitioner that Shri S.C.Jain, Assistant Accounts Officer, who is alleged to have prepared the inventory, was not examined to prove the list prepared by him and it has materially affected the prosecution version.

The record also shows that some arbitration proceedings had been initiated. The file containing those proceedings is Exhibit D2. A perusal of this file shows that the petitioner was directed to pay Rs.69,799.23 along with interest at the rate of 6% till the date of its realisation.

For the reasons stated above, the revision petition is accepted, the impugned judgments/ order of sentence, as also the conviction and sentence awarded to the petitioner are set aside.

January 24,2007 (Mahesh Grover)
"SCM" Judge